No. 79-2006

IN THE

Supreme Court of the United States

October Term, 1979

LLOYD BARRENTINE, CLYDE G. EDWARDS, CLEO KEENEY, MAXIE BLANTON, JOHNNY ROBINSON, CHARLEY DEATON, H.E. MITTCHELL, AND L.R. YOUNG,
Petitioners,

v.

ARKANSAS-BEST FREIGHT SYSTEM, INC., INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS AND WAREHOUSEMEN, LOCAL 878, AND A.J. PICKERING, PRESIDENT,
Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

REPLY BRIEF FOR PETITIONERS

DAVID C. VLADECK
(Counsel of Record)
ALAN B. MORRISON
ARTHUR L. FOX II
Suite 700
2000 P Street, N.W.
Washington, D.C. 20036
(202) 785-3704
Attorneys for Petitioners

January 6, 1981

THE CASILLAS PRESS, INC. - 1717 K Street N.W. - Washington, D.C. - 223-1220

TABLE OF AUTHORITIES

Cases — Page

Alexander v. Gardner-Denver Co.,
415 U.S. 36 (1974) 4

Amalgamated Association of Street, Electric Ry. and Motor Coach Employees v. Pennsylvania Greyhound Lines, Inc.,
192 F.2d 310 (3rd Cir. 1951) 2

Beckley v. Teyssier,
332 F.2d 495 (9th Cir. 1964) 3

Burrell v. LaFollette Coach Lines,
97 F.Supp. 279 (E.D. Tenn. 1951) 3

Donahue v. Susquehanna Collieries Co.,
138 F.2d 3 (3rd Cir. 1943) 1, 2, 3

Evans v. Hudson Coal Corp.,
165 F.2d 970 (3rd Cir. 1948) 1, 2, 3

Gatliff Coal Co. v. Cox,
142 F.2d 876 (6th Cir. 1944) 2

Gray v. Swanney-McDonald, Inc.,
436 F.2d 652 (9th Cir.), *cert. denied*, 402 U.S. 995 (1971) 3, 4

International Union, United Furniture Workers v. Colonial Hardwood Flooring Co.,
168 F.2d 33 (4th Cir. 1948) 2

Leyva v. Certified Grocers of California, Ltd.,
593 F.2d 857 (9th Cir. 1979) 3

Lincoln Mills v. Textile Workers Union,
230 F.2d 81 (5th Cir. 1956), *rev'd on other grounds*, 353 U.S. 448 (1957) 2

Mercury Oil Refining Co. v. Oil Workers International Union,
187 F.2d 980 (10th Cir. 1951) 2

Morelock v. NCR Corp.,
586 F.2d 1096 (6th Cir. 1978) 3

Pennsylvania Greyhound Lines, Inc. v. Amalgamated Association of Street, Electric Ry. and Motor Coach Employees,
193 F.2d 327 (3rd Cir. 1952) 3

United Electrical, R. & M. Workers v. Miller Metal Products,
215 F.2d 221 (4th Cir. 1954) 2

Statutes:

Arbitration Act

9 U.S.C. § 1, *et seq.* 1

Fair Labor Standards Act

29 U.S.C. § 216(b) 3

29 U.S.C. § 256 3

Other Authorities:

H.R. Rep. No. 326, 80th Cong., 1st Sess.
13 (1947) 3

IN THE

Supreme Court of the United States

October Term, 1979

No. 79-2006

LLOYD BARRENTINE, *et al.*,

Petitioners,

v.

ARKANSAS-BEST FREIGHT SYSTEM, INC., *et al.*,

Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

REPLY BRIEF FOR PETITIONERS

In its brief, respondent Arkansas-Best Freight System, Inc. ("ABF"), raises three arguments to which this brief responds.

1. Respondent's heavy reliance on the decisions of the Court of Appeals for the Third Circuit in *Donahue v. Susquehanna Collieries Co.*, 138 F.2d 3 (1943), and *Evans v. Hudson Coal Corp.*, 165 F.2d 970 (1948), is misplaced. To begin with, both cases held only that under the Arbitration Act, 9 U.S.C. § 1 *et seq.*, federal courts were required to stay proceedings pending referral of the underlying dispute to arbitration. Neither decision even hinted that once the arbitral process is complete, federal courts are foreclosed from examining the arbitration award to ensure

that it does not sanction the diminution of rights conferred by the FLSA. Indeed, in *Hudson Coal*, the Third Circuit cautioned that "if the arbitration process proceeds to an award which is not in accordance with the provisions of the Fair Labor Standards Act or any other applicable statute, Sections 10 and 11 of the Arbitration Act provide means for its vacation, rehearing, modification, or correction. The court below will be open for those ends." 165 F.2d at 974. Here, there already has been full recourse to the arbitral process. Even ABF concedes that petitioner Barrentine has fully pursued at least five grievances (App. 16). Accordingly, *Hudson Coal* and *Susquehanna Collieries* in no way support ABF's position.

Second, the authority of *Hudson Coal* and *Susquehanna Collieries* has long been clouded. The Third Circuit's view was not followed by any other circuit and expressly rejected by at least four circuits. *Gatliff Coal Co. v. Cox*, 141 F.2d 876, 882 (6th Cir. 1944); *International Union, United Furniture Workers v. Colonial Hardwood Flooring Co.*, 168 F.2d 33, 37-38 (4th Cir. 1948); *United Electrical R.&M. Workers v. Miller Metal Products*, 215 F.2d 221, 223-224 (4th Cir. 1954); *Mercury Oil Refining Co. v. Oil Workers International Union*, 187 F.2d 980, 983 (10th Cir. 1951); *Lincoln Mills v. Textile Workers Union*, 230 F.2d 81, 83-86 (5th Cir. 1956), *rev'd on other grounds*, 353 U.S. 448 (1957). Thus, contrary to ABF's assertions, the Third Circuit's was never the prevailing view.

Third, ABF glosses over the fact that even the Third Circuit later expressly rejected its construction of the Arbitration Act in *Hudson Coal* as "inconsistent with the intent of Congress." *Amalgamated Association of Street, Electric Ry. and Motor Coach Employees v. Pennsylvania Greyhound Lines, Inc.*, 192 F.2d 310, 311 (3rd Cir. 1951); *accord, Pennsylvania Greyhound Lines, Inc. v.*

Amalgamated Association of Street, Electric Ry. and Motor Coach Employees, 193 F.2d 327, 328 (3rd Cir. 1952). Accordingly, *Hudson Coal* and *Susquehanna Collieries* provide no support for respondent's position.[1]

2. Respondent also argues that petitioners' FLSA claims are barred because they did not file written consents authorizing suit, which ABF claims are required by 29 U.S.C. § 216(b) (Br. 21-25). This contention, however, rests on a serious misreading of the FLSA. In the first place, the filing of consents is not a jurisdictional requirement. Rather, filing serves only to stop the running of the statute of limitations in "collective or class actions." 29 U.S.C. § 256. While the complaint in this action initially sought relief on behalf of the named plaintiffs and others "similarly situated" (App. 3), the trial court dismissed the class claims prior to trial (Pet. App. 15a n.1). Thus, since this action was tried only on behalf of the named plaintiffs and was not a "collective or class" action, the filing of consents was unnecessary.

The case law is in accord with this reading of the Act. The two courts of appeals to address this issue have both concluded that where, as here, a case is maintained as one brought on behalf of named individuals, consents are not required. *Morelock v. NCR Corp.*, 586 F.2d 1096, 1103 (6th Cir. 1978); *Gray v. Swanney-McDonald, Inc.*, 436 F.2d 652, 655 (9th Cir.), *cert. denied*, 402 U.S. 995 (1971); *see* H.R. Rep. No. 326, 80th Cong., 1st Sess. 13 (1947). *But see Burrell v. LaFollette Coach Lines*, 97 F. Supp. 279 (E.D. Tenn. 1951).

---

[1] *Beckley v. Teyssier*, F.2d 495 (9th Cir. 1964), also relied on heavily by ABF (Br. 7-8), has similarly been discredited. *See Leyva v. Certified Grocers of California, Ltd.*, 593 F.2d 857, 862 (9th Cir. 1979).

Even if petitioners were required to file consents, however, ABF's claim would still fail. Each petitioner personally signed at least two sets of answers to interrogatories (*e.g.*, App. 34-41), and the signing of answers to interrogatories has been held to satisfy the consent requirement. *Gray v. Swanney-McDonald, Inc., supra,* 436 F.2d at 655. Accordingly, respondent's consent argument is without force and should be rejected.

3. Respondent further asserts that petitioners actually did submit their FLSA claims to the joint grievance committee (Br. at 1-2). As discussed in petitioners' opening brief, pp. 27-29, it is immaterial whether the FLSA claims were in fact submitted to the grievance committee. This Court emphasized in *Alexander v. Gardner-Denver Co.,* 415 U.S. 36 (1974), that where statutory rights are implicated, courts should not defer to grievance decisions but must instead examine such claims on the merits, even if the arbitrator purported to decide the statutory claim. The Court admonished that "courts should ever be mindful that Congress, in enacting Title VII, thought it necessary to provide a judicial forum for the ultimate resolution of discrimination claims. It is the duty of the courts to assure the full availability of this forum." 415 U.S. at 60 n.21. These final cautionary words are, of course, equally applicable to FLSA claims for which Congress also thought it necessary to provide a judicial forum for resolution.

Moreover, the facts of this case do not support ABF's assertion. Neither court below found that petitioners' FLSA claims had been presented to the grievance committee, let alone that the committee had actually considered such claims. Neither the grievances submitted to the joint grievance committees nor the committees' reports make any mention of the FLSA, or indeed any other statute (App. 19-21; R. 43-54, 77-81, 95). The sole reference to

federal law in the entire record of the grievance proceedings was an assertion in one of the grievance filings (App. 16, 21) that "Federal Wage Laws also state that this is compensable time." No statute was cited as an independent basis for recovery, and no mention of federal wage law is made by the grievance committee in its disposition of any of the grievances. As is evident, this isolated reference can hardly be construed as a "submission" of the FLSA claim to arbitration, particularly since it was not Mr. Barrentine, but his union, which processed the grievances. Thus, as Judge Heaney concluded in his dissent, "there was no intent to submit the FLSA claim to arbitration and it was not submitted to arbitration." (Pet. App. 31a).

CONCLUSION

For the reasons stated above and in petitioners' opening brief, the judgment of the court of appeals should be reversed.

Respectfully submitted,

DAVID C. VLADECK
ALAN B. MORRISON
ARTHUR L. FOX II
Suite 700
2000 P Street, N.W.
Washington, D.C. 20036
(202) 785-3704

Attorneys for Petitioners

January 6, 1981